

**ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE**

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PHILIP T. McLAUGHLIN
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STEVEN M. HOURAN
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April 4, 2001

**Re: Homeowners Insurance for Oil Discharges from
Petroleum Storage Facilities**

Dear Sir or Madame:

The Oil Fund Disbursement Board ("Board") has asked me to notify your company of a change in the manner in which the state petroleum fund staff will assess whether there is private insurance available to address oil discharges from homeowner storage tanks.

As you know, the state petroleum fund for residential oil releases, established under N.H.R.S.A. 146-E, is an excess insurance fund. The petroleum fund is available to reimburse homeowners for the costs of cleaning up an oil discharge only after all other private insurance is exhausted. Therefore, when an oil discharge occurs, the homeowner must first seek coverage under their private insurance and provide a copy of the correspondence concerning the findings of their insurance provider when submitting an initial claim to the state fund. To date, the Board has accepted coverage determinations in a variety of forms. However, the lack of standardization has resulted in specific problems, requiring a change in Board policy, as discussed below.

We understand that most, if not all of the standard homeowner insurance policies issued under Insurance Services Office guidelines, include third party liability coverage. Therefore, damage to the groundwaters or surface waters of the state or third party property would be a covered occurrence. Both the costs of investigation and remediation of water impacts are deemed to be "damages" under New Hampshire law. However, in many cases, insurance provider coverage determinations occurring at the outset of the release event do not consider all of the potential consequences of the loss. The issue of coverage for impacts to groundwater, surface water or third party property is often not addressed at all. Therefore, the Board expects each insurer to address all contamination issues, including soil, groundwater, surface water and third party property at the time the loss is reported.

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Also, please be advised that, for all future homeowners requests for reimbursement of oil discharge cleanup costs, a presumption will be applied that the costs of investigating and remediating groundwater or surface water contamination are covered up to limits of the homeowner policies issued by your company. In order to overcome this presumption, the homeowner must submit a written certification from your company that coverage does not extend to these costs under the terms of the policy and the reasons therefore. This certification must be provided in a timely manner when the loss is reported and notification of an oil release is provided to the N.H. Department of Environmental Services.

The Board appreciates your efforts to address homeowner oil release coverage issues in a timely manner. Please feel free to contact me if you have any questions.

Sincerely,



Maureen D. Smith
Senior Assistant Attorney General
Environmental Protection Bureau
Office of the Attorney General
603-271-3679

MDS/dmn

cc: Representative Robert G. Holbrook, Chairman, Oil Fund Disbursement Board
George Lombardo, P.E., Administrator, ORCB
Gary Lynn, P.E., Supervisor, PRS
Timothy Denison, Fund Manager, ORCB